

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Revisional Jurisdiction)

**Present:**

**Mr. Justice S.M. Masud Hossain Dolon**

**Civil Revision No. 368 of 2012**

Most. Hanufa Khatun.

.... pre-emptee-appellant-petitioner.

-Versus-

Md. Shahid and others

.... pre-emptor-opposite parties.

Mr. Sherder Abul Hossain, with

Mr. Md. Ismail Hossain, Advocate

.... for the petitioner.

Mr. Md. Mubarak Hossain, Advocate

.... for the opposite parties.

**Heard on: 13.05.2024, 15.05.2024 &**

**Judgment on: 16.05.2024**

This Rule has been issued calling upon opposite-party No. 1, to show cause as to why judgment and order dated 03.01.2012 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Laxmipur in Miscellaneous Appeal No. 06 of 2008 dismissed the appeal and affirmed the judgment and order dated 06.03.2008 passed by learned Assistant Judge, Ramgonj, Laxmipur in Miscellaneous (Pre-emption) Case No. 74 of 2007 suffers from an error of law resulting in an erroneous decision occasioning failure of justice and should not be set-aside and/or such other or further order or orders passed as to this court may seem fit and proper.

Facts for disposal of the Rule are that, the opposite party No. 1 as pre-emptor filed Miscellaneous Case being No. 74 of 2007 under section 24 of the Non Agriculture Tenancy Act, 1949 before learned Assistant Judge, Ramgonj, Laxmipur stating, inter alia, that the pre-emptor opposite party No. 1 is the co-sharer in the case holding by inheritance. The vendor opposite party No. 2 sold the case land to the pre-emptee-petitioner on 16.05.2001 without giving any notice to the pre-emptor-opposite party No. 1. That the pre-emptee purchaser is a stranger to the case land and the pre-emptor came to know about transfer of the case land on 04.06.2001. That the pre-emptor has no more than 25 bighas land and prayed to purchase the case land as Co-sharer.

The pre-emptee petitioner contested the case by filing a written statement denied the material allegations of the case and stated that the opposite party No. 2 expressed his willingness to sale the case land and the pre-emptor-opposite party No. 1 refused to purchase the land thereafter the opposite party No. 2 approached to the pre-emptee and the pre-emptee petitioner agreed to purchase the case land with the consent of the other co-sharer including the pre-emptor opposite party No. 1. Thereafter the opposite party No. 2 received Taka 50,000/- as consideration money but for registration purpose it was written Tk. 25,000/- and accordingly executed the sale deed being No.

3018 on 16.05.2001. That the pre-emptor filed the instant pre-emption case after expired of the statutory period of limitation for illegal gain and the pre-emptee prayed dismissal of the case with cost.

The learned Assistant Judge, Ramgonj, Laxmipur after scrutinized oral and documentary evidences adduced by the parties in support of their respective claims, allowed the miscellaneous case against which pre-emptee purchaser as appellant filed Miscellaneous Appeal No. 06 of 2008 before learned District Judge, Laxmipur who transferred the same to learned Joint District Judge, 2<sup>nd</sup> Court, Laxmipur for disposal. After hearing the parties, learned Joint District Judge discharged the appeal and affirmed the judgment and order passed by learned Assistant Judge, Ramgonj, Laxmipur against which the pre-emptee-purchaser has moved the instant revisional application and obtained Rule.

Mr. Sherder Abul Hossain, the learned Advocate on behalf of the pre-emptee petitioner submits that the learned trial court as well as the appellate court failed to apply judicial mind in disposing the case and by non-considering and misreading the evidence on record committed serious error of law resulting in an error of decisions occasioning failure of justice. He further submits that both the courts concurrently found that the pre-emptor is the co-sharer by inheritance and the pre-emptee is co-sharer by purchased and the learned courts

below have arrived at wrong decision that the pre-emptor being co-sharer by inheritance is predominance in the co-sharer by purchase.

Learned Advocate lastly submits that the learned courts below without considering the pre-emptee purchaser and pre-emptor are both co-sharer of the case land and have equal rights in the holding as per section 24 of the Non Agricultural Tenancy Act, 1949. Furthermore the pre-emptee purchaser is a co-sharer in the holding therefore no pre-emption case can file against co-sharer as he is protected and thereby committed error of law resulting in an error in the decision occasioning failure of justice. In this regard he referred the case of S.M. Bashiruddin vs Jahurul Islam Chowdhury and another reported in 35 DLR (AD) 230. Learned Advocate lastly submits that the Rule may absolute.

Mr. Md. Mubarak Hossain, the learned Advocate on behalf of the opposite party No. 1 submits that both the two courts below concurrently found that the petitioner failed to prove his case in consequence of which the case was dismissed and as such, the revisional Court will not interfere with concurrent finding of both the courts below unless the petitioner can show any misreading of evidence, non consideration of material evidence on record and misconception of law. He further submits that pre-emptor is the co-sharer by inheritance in respect of the case land and he also have no

knowledge about the transfer of the case land and hence prayed for discharged the Rule.

I have heard the learned Advocate for both the sides, perused the lower courts record and all other relevant papers as well as the judgments and orders passed by both the Courts below. It transpire that the petitioner had firstly purchased the case land in dag No. 279 vide Registered kabala No. 447 dated 06.01.1975. Thereafter as a co-sharer in the case holding she further purchased the case land on 16.05.2001. It is crystal clear that the petitioner is a co-sharer of the case land by purchased and he is not a stranger. The pre-emptee opposite party No. 1 is a co-sharer of the case land by inheritance. It appears that both the courts below concurrently found that the pre-emptor is the co-sharer by inheritance and the pre-empee is co-sharer by purchased on this point the courts below found that pre-emptor being co-sharer by inheritance has supremacy over the co-sharer by purchased. In this circumstances the co-sharer by inheritance has predominance the co-sharer by purchase.

It appears that under section 24 of the Non-Agricultural Tenancy Act that If a portion or share of the non-agricultural land is transferred only then one or more co-sharer tenants of such land may within four months of such transfer with knowledge or by notice can file pre-emption case. Section 24 of the Non Agricultural Tenancy Act has not

given any predominance co-sharer by inheritance over the co-sharer by purchased. It appears that section 96 of the State Acquisition and Tenancy Act was several times amended and gave predominance co-sharer by inheritance over the co-sharer by purchased but Section 24 of the Non Agricultural Tenancy Act, 1949 has not given any privilege to the co-sharer by inheritance over the co-sharer by purchase. Therefore both the courts below wrongly found that pre-emptor as co-sharer by inheritance got privilege against pre-emptee purchaser and I found the same is misconception of law.

In the case of S.M. Bashiruddin vs Jahurul Islam Chowdhury and another reported in 35 DLR (AD) 230 held that:-

“In allowing pre-emption the expression ‘co-sharer tenant in the land’ has been used in sub-section (1) of section 24, but in clause (a) of sub-section (11) of section 24 protecting from pre-emption a transfer of a portion of the land to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, the expression ‘co-sharer in the tenancy has been used Clause (a) of sub-section (11) provides that nothing in this section shall apply to – “a transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase.” Therefore in using the expression ‘a co-sharer in the tenancy’ and ‘a co-sharer in the land’ are in different sections of the Act. Transfer of a portion or sharer of

the 'non-agricultural land' to a stranger opens right of pre-emption to one or more co-sharer tenants of such land, but when a portion or share of non-agricultural land is transferred to a co-sharer in the tenancy, this is protected." It appears that section 24 of the Non Agricultural Tenancy Act, 1949 has allowed pre-emption case against stranger purchaser but it does not allowed pre-emption case against a co-sharer.

Considering the above facts and circumstances of the case, I am of the view that the impugned judgments and orders passed by both the courts below suffers from gross irregularity and committed error of law resulting in an error in the decision occasioning failure of justice and as such it is not tenable in law.

In view of the discussion made above, I find merit in this Rule.

Accordingly, the Rule is made absolute, however, any order as to costs. The impugned judgment and order passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Laxmipur in Miscellaneous Appeal No. 06 of 2008 dismissed the appeal and affirmed the judgment and order dated 06.03.2008 passed by the learned Assistant Judge, Ramgonj, Laxmipur in Miscellaneous Case No. 74 of 2007 be set-aside.

The order of stay granted earlier by this court is hereby vacated.

Send down the L.C.R along with a copy of this judgment to the concerned Court at once.